BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the name of "Maritime Communications / Land Mobile LLC" Alleged Debtor-in-Possession:	
Renewal Applications: AMTS Licenses WQGF315, -316, -317, -318 ("Licenses")	FNs: 0007603776, -777, -778, -779
Extension Requests: to extend/waive the Licenses' construction/ buildout deadline	FNs: (no Form 601s submitted)
Assignment Applications: to assign the Licenses to Choctaw Holdings, LLC	FN: 0005552500
Proceedings under ECFS	Dockets 11-71 and 13-85
The "Case" defined herein: the above and interdependent proceedings and decisions	Above and other: in ULS, ECFS, FOIA and other proceedings

To: Office of the Secretary
Attn: Chief, Wireless Bureau[1]
Filed: On ULS under the Licenses and FNs
And on ECFS under 11-71 and 13-85

PETITION FOR RECONSIDERATION AND REVIEW

UNDER COMMUNICATIONS ACT §405 AND FCC RULE §1.106, UNDER §1.41 [2] AND THE PUBLIC INTEREST, AND UNDER CONSTITUTIONAL DUE PROCESS

Warren Havens, and
Polaris PNT PBC
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June 12, 2017

[1] If any FCC authority deems this to be more properly ruled on by the Commission, then this should be deemed submitted to the Commission. Reasons therefore are indicated herein.
[2] And under any other rule the FCC deems to apply including §1.115.

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[3] See §1.18(a)-(b), §1.956(a)-(c), and 9 FCC Rcd 6513: "§22.135 Settlement conferences…. apply to… contested proceeding….to use alternative dispute resolution procedures… See…7 FCC Rcd 2874" under 1.18(a)-(b).

[4] E.g.,

APPENDIXES

The APPENDIXES, ("App's") are in a separate PDF referenced and fully integrated herein and concurrently filed and served.

For convenience, the Appendixes are listed and described below at the start of this petition.

App 1. From the Order:
Parts re standing issues (for convenience)

App 2. Standing issues chart:
From the Order, and from Havens Petition, with notes.

App 3. 5 U.S.C. 702, and 47 USC 402(a)-(b):
Re: Party legal standing under the standard of the federal APA ¶702 that applies to FCC proceedings, and same under the related Communications Act §402. This standing standard is less stringent than the standard to file and prosecute cases in Article III courts.

App 4. From *'Havens' 220 Termination Order*, DA DA-12-848, and Order on Reconsideration, DA 14-121.
Re: §1.946 extension criteria, standing issues, etc. Re standing or alternative FCC acceptance: *MCLM* challenger – its challenges were not dismissed for lack of standing or an alternative, and these FCC rulings were made in accord.

App 5. From *Holland Order* on renewals and certain time extensions, DA 16-469.
Re: §1.946 criteria, standing issues, etc. Re standing or alternative FCC acceptance: the *late* challenger's challenge was still processed under §1.41 and the 'public interest,' and this FCC ruling was made in accord in part.

App 6. From *Havens AMTS Order on Recon*, DA 12-244.
Re: §1.946 criteria, etc.— here, applicable to *AMTS* license. Dismissal of renewal, and denial of extension request for a license.

/ / /

This filing is solely by Warren Havens and Polaris PNT PBC.

I. SUMMARY AND INTRODUCTION

A. Summary

A summary is provided by the table of contents' descriptive sections. In addition:

Under Section 1.106, Warren Havens and Polaris PNT PBC, the Petitioners, hereby file this petition for relief that includes reconsideration under §1.1.06, and in the alternative under §1.41, and Federal Constitution and Federal Statutes (the "Recon") with regard to the Order of the Mobility Division of the Wireless Telecommunication Bureau (the "Division" or the "Bureau), DA 17-450, released May 11, 2017 (the "Order") that dismissed their petition to deny (the "Petition") based on lack of standing.[5]

Havens clearly has Article III standing to submit and pursue the subject challenge and that is shown: (A) in the subject challenge pleadings of MCLM licenses —(regarding the interdependent (i) Commission "Second Thursday" decision, FCC 16-172, (ii) Bureau extensions-renewals decision, and (iii) Bureau assignments decision, DA 17-26): the "MCLM Relief Decisions" and (B) further in the relevant records as described herein. The Bureau's Order — an attempt to cure the Commissions' "Second Thursday" decision — only makes it worse under law, by avoiding Havens's Article III standing in violation of Due Process to deprive Havens of Fifth and First Amendment rights, protect unlawful boons to MCLM, and suppress market competition Congress mandated and protects in the 1996 Telecom Reform Act, FCC rules, and case law (Section 309(d), and §1.939).

[5] §1.49 is the FCC's rule regarding "Specifications as to pleadings and documents." §1.49(e) refers to §22.6 for "specifications" for petitions, pleadings and other documents that are filed electronically via ULS. But, the FCC never created a rule §22.6. Thus, there are no specifications that apply to this Petition. However, in Federal courts, and in other courts, there is a separate rule regarding page length that applies to electronic filings, the vast majority of filings. The rule specifies a maximum word count (excluding certain sections, similar to those excluded in FCC rules), in lieu of a quantity of pages.

Also, Petitioners show herein that text needed for an FCC Order doesn't count if it is placed in footnotes, under the Havens v Mobex-MCLM Ruling by the Third Circuit Court cited in the FCC's recent Declaratory Ruling request under §1.2 regarding §80.385(b). Thus, the footnotes that do more then explain authority, do not count, and when the footnotes on standing are stripped from the Order, the Order lacks much of its substance that facially disputes and rejects Havens's standing.

The Order could not be more unlawful, against FCC rules, precedents, fair dealing, FCC integrity and reputation, and the public interest under §1.964. The FCC can't *sua sponte* (or even if MCLM had requested) waive the extension-standard requirements of §1.946 by reference to §80.49 or any other rule. The FCC cannot grant unlawful boon to MCLM even denied to companies like Fiberbond in a bankrutpcy with FCC violations involved. The Bureau improperly jumps on the Enforcement Bureau side to use FCC public resources to conceal and reward MCLM's admitted and demonstrated unlawful actions; false, fraudulent and misleading statements; and obstruction of justice including by destruction and concealment of evidence underlying all of its licenses under 11 USC §1519.

B. Defined terms and words.

Some capitalized and other terms herein have meanings given in the Petition.

C. Bureau now acts, without authority, for Commission. And other new and preceding matters.

It is clear that the subject Division of the Wireless Bureau -- by rejecting the substance of the Petition by finding lack of standing, when that could not be more of a series deprivation of threshold due process (since it is abundantly clear Havens had and has private-party standing, and that the Petition otherwise needed to be addressed in the public interest) – has now joined the Enforcement Bureau to unlawfully protect MCLM from demonstrated (and some admitted) serious violations of FCC rules, and demonstrated (and some admitted) 18 USC violations as

well. This is new and this by itself is good cause to reopen the decisions in the Order, and otherwise supports this Recon filings.

D. The 3 *Interdependent* (i) 'Second Thursday', (ii) extension, and (iii) Choctaw assignment Orders: and the 3 challenge petitions (with the preceding and associated pending matters, the "Case"). The 3 Orders are *ultra vires* and void, protecting the *ultra vires* perversion of the DE-discount auction-qualification rules for MCLM to undercut competition in auction 61 and skew all subsequent auctions in violation of the core Congressional mandate in 47 USC §309(j) of the Communications Act.

These three Orders are interrelated in substance and effect as shown in Petitioners' challenge filings to these three Orders, including the subject Order. The "Second Thursday" Order has no practical meaning without the Order, which is indicated in the Order itself. However, the Bureau and Division have not authority to act for the Commission, and it is solely the Commission that heard and granted the Second Thursday Order. The Order is defective on this basis, to begin with.

E. This entire decades-long Case should be sent to settlement arbitration,[6] in lieu of District Court action (agency *ultra vires* actions with delay and prejudice are tried in USDC, not futilely reviewed by a Circuit Court).[7]

See Section IV below.

II. PROCEDURAL ERRORS AND DEFECTS

Procedural errors and defects require reconsideration and reversal. These, with the case history, constitute violations of due process and equal protection under the Fifth Amendment of the U.S. Constitution, the Communications Act, the Telecom Reform Act, other federal law.

A. Havens. Havens has qualifying standing. Order's error, avoidance and due process violation in finding lack of qualifying standing.

1. Havens *does have qualifying standing* under facts prior to the Order. The Order's avoidance assertions otherwise are frivolous and violations of due process and equal treatment.

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[6] See §1.18(a)-(b), §1.956(a)-(c), and 9 FCC Rcd 6513: "§22.135 Settlement conferences…. apply to… contested proceeding….to use alternative dispute resolution procedures… See…7 FCC Rcd 2874" under 1.18(a)-(b).

[7] This will be presented further by a supplement to this Recon, once the matters is presented to the FCC Office of General Counsel in the near future. See §§ IV.A and IV.C. below.

Some of the following numbered items have related or partially redundant matters but are separated into items for clarity.

(1) See Appendix 2: the notes-comments therein are by Warren Havens and are referenced herein, and are substantially reflected below.

(2) The Order errs and is defective in finding that Petitioners lack the requisite party legal standing. The Order applied the wrong standard -- for a party to present and maintain a case in an Article III court -- but even under that standard, Petitioners clearly have standing, and they even more clearly have standing under the applicable lesser standard. This applicable standard is reflected in the standing paper at http://federalpracticemanual.org/chapter3/section1 [8] (emphasis and text in brackets added, and irrelevant footnotes deleted):

> …. The zone-of-interests test originally arose from an interpretation of the standing provision in the Administrative Procedure Act.**155**/ In *Block v. Community Nutrition Institute*, the Court suggested a liberal standard for applying the zone-of-interests test. A plaintiff fails the test when there is express legislative intent to preclude review. The presumption is in favor of judicial review [thus, standing], which may be overcome only by clear and convincing evidence found in the legislative scheme. Subsequently, the Court expressly stated that the zone-of-interest test "is not meant to be especially demanding," precluding **standing only when** "the plaintiff's interests are so marginally related to or inconsistent with the purposes implicit in the statute that it cannot be assumed that Congress intended to permit the suit."
>
> **Fn 155**/ Administrative Procedure Act, 5 U.S.C.§702.

5 USC §702 and the related 47 USC §402, are set forth in Appendix 3, with brief comments (incorporated herein). These state the simple, clear relevant standing standard (or test, or criteria). Petitioners could not more clearly meet this standard, and also the Article III court action standard, as show in the chart in Appendix 2 and further shown below. The fact is that the FCC (when not acting prejudicially, for ultra vires actions, and the like—unlike in the instant case) accepts and

[8] The Order's section on standing essentially tracked this practice manual, in so far as the Order cited to a party's legal standing in court actions in Article III courts. The Order, however, did not include the above part of the manual that is applicable to FCC proceedings, and the subject Havens Petition, and all his challenges underlying the "3 Orders" and the overall "Case."

processes challenges in most cases under the standing test summarized above and set forth under 5 USC §702 and the related 47 USC §402. This "liberal standard… precluding standing only when … interests are so marginally related or inconsistent with the [subject] statute[s]" is also shown by 47 USC §208 (emphasis added):

> (a) Any person, any body politic, or municipal organization, or State commission, complaining of anything done or omitted to be done by any common carrier subject to this chapter, in contravention of the provisions thereof, may apply to said Commission by petition….No complaint shall at any time be dismissed because of the absence of direct damage to the complaint.

This does not require standing as required for Article III court complaints. The reasons are clear in the Communications Act (and Acts amending it): the public interest is always fundamental in challenges to any license applicant, licensee, or other party before the FCC, or to any FCC action of any sort, whereas in litigation in District Courts the complaints are or the most part seeking private relief. This difference is discussed with history and case authorities in "Litigating Article III Standing....", University of Pennsylvania Law Review. Vol. 162: 2014 (Martin Redish and Sopan Joshi).

(3) The Petition (and its Reply) and the chart in Appendix make abundantly clear that Petitioners meet the standing requirement for challenge filings under the APA-FCC standard. In addition:

(4) See Appendixes 4 and 5: these make clear that, whether under any "Article III" standing standard, or APA-FCC "liberal… marginally related" standard, or otherwise found to be "in the public interest" (that FCC staff, from time to time, defines and applies, either invoking §1.41, or by a *sua sponte* determination, or with no stated determination at all in some cases[9])

[9] E.g., the Bureau granted the subject MCLM geographic AMTS licenses in the first place with no rule waiver grants stated, but obviously with core action rules actually waived, and in doing so excluded Havens who was clearly a party with standing (including under "Article III" standards: which waived other still other rules of fundamental due process under law.

(5) See the Commission statements in 2011 in *FCC 11-64*, ¶72, and in December 2016 in *FCC 16-172*, FN 78 which identifies Havens in the present tense as still a party in interest. Those statements are based directly on Havens's "petitioner" status regarding the MCLM Licenses that remains to this day. A party in a legal proceeding does not have to reassert or prove standing each day or at each new or changes aspect of a proceeding. The interdependent 3 Orders, including the Order, are part of the above-defined Case that encompasses all MCLM licensing components including 13-83 and the 3 Orders.

(6) Further, Havens's petitioner status and standing is based on Havens's underlying economic ownership standing in the "SkyTel" companies listed in these two Commission Statements. Economic interests are legally protected interests that establish Article III standing. *Clinton v. New York,* 524 U.S. 417, 432 (1998). Havens have always held, and still holds, large economic interests as a member in each of the "SkyTel" entities named in those two Commission statements. E.g., see FCC forms 602 of these entities, and the California court receivership proceeding *Leong v Havens* referenced in various FCC proceedings including in 11-71.

(7) The Third Circuit *Havens v Mobex, MCLM* decision (see IV.B below) was a procedural rejection regarding the FCC law claims, not a decision on the merits. MCLM continued with the alleged FCC law violations, and fraud and obstruction of justice (document destruction, concealment, perjury etc.) to this day in the overall "Case" defined herein from which the "3 Orders" including the Order arise, and these alleged wrongs are still pending in 11-71, 13-85.

(8) Because the EB, MCLM, Richard Sippel (e.g., see 15M-14), and others have challenged-- and continue to challenge-- before the FCC my interests and qualifications regarding FCC licensing and other matters, I (Havens) remain a party in interest in those matters as the respondent. Those challenges also allow my counter claims or challenges I have submitted and

maintain, under Article III standing, because they attack my economic and other protected interests.

(9) I (Havens) have Article III standing under the First Amendment and other basis to continue participation in the FCC matters to which this End Note [2] pertains. This includes but is not limited to the fact that I am the sole member of Skybridge a nonprofit IRC §501(c)(3) corporation founded solely to promote public interest wireless including by publications and advocacy, and that includes in relevant FCC on relevant law, policy and licensing.

(10) I obtained and retain assignments of litigation claims, regarding FCC licensing matters, including as shown in US Supreme Court Docket 16A42 and Ninth Circuit Docket 12-16984 as to licensee entities noted in '(2)' above, as described in *Sprint v. APCC,* 554 U.S. 269 (2008).

In addition:

In ¶8, the Order alleges to paraphrase the standing requirement, footnoting certain precedents. However, that paragraph does not assert that Petitioners did not meet the described standing standard. In addition, through the entire standing section of the Order, the Bureau relies on footnotes for substance of the Order's decision on standing; but the same Bureau recently found that footnotes cannot be used for an order that has legal effect. See above section on the Bureau's Declaratory Ruling in the *Havens v. Mobex, MCLM* Third Circuit Case.

In ¶9, the Order suggests that Petitioners only asserted that their past standing in other Commission proceedings (also regarding MCLM licenses) need not be demonstrated again in the Petition.

In his last-filed challenge to the 3 Orders and in his Reply in the instant proceeding, Havens described further basis of standing, which is regarding pending 220-222 MHz license terminations. See *Order*, DA-12-848, *27 FCC Rcd 5841* (2012) (the "220 MHz Termination

Order"). The 220MHz Termination Order shows that MCLM challenged Havens' 220 licenses. MCLM was not a direct competitor in subject 220 MHz auction or licensing. In addition, the FCC has upheld its 220 MHz Termination Order on appeal, including in *Order on Reconsideration*, DA 14-121, *29 FCC Rcd 1019*, which considered and accepted MCLM's arguments opposing Havens petition for reconsideration when denying Havens' appeal. See DA 14-121 at ¶17, which shows that the FCC considered MCLM's challenge's arguments in upholding termination of Havens' 220 licenses, "After careful review of the record, including the arguments presented by the Petitioners and Maritime, we hereby deny the relief requested in the Petition for Reconsideration and reaffirm the findings in the Havens 220 MHz Termination Order."

2. Additional facts showing Havens standing, and standing can be shown at any time.

New facts providing standing: (1) FCC's decision on Havens' Petition for Declaratory ruling on Third Circuit decision regarding Section 80.385 and Cooperation Orders. See Section IV below. The FCC decided on that Declaratory Ruling request which shows that Havens has to have standing, since otherwise, FCC did not have to decide on that. (2) The FCC OGC recent letter (see Section IV below) and related FCC decisions on FOIA 204-664 shows that Havens was impermissibly denied records relevant to 11-71 hearing, MCLM and MCLM's licenses.

B. MCLM. MCLM lack of Standing. Order's error, avoidance and due process violation in finding qualifying standing.

1. The actual MCLM *does not have qualifying standing*, and each of the 3 Orders, including the Order, are void because MCLM's licensee status and licenses are void *ab intio* for failure, for over a decade already, to seek and obtain grant under §301(d) of the Communications Act of the actual, admitted controlling interests that is defective basis of the "Second Thursday" request and Order, and all of the 3 interdependent Orders.

Under the Order, MCLM lacks standing since it has not even submitted with approval the required transfer of control application or the associated required form 602. A party cannot have standing to seek and get any licensing relief if its controlling interests have not even been

properly identified and approved. The Petition pointed out these glaring defects and rule violations by MCLM, but the Bureau ignored them entirely in the Order, by alleging lack of standing, even though such facts should clearly be considered in the public interest under Sections 1.41, 1.939, and 1.106(c)(2). The threshold of standing for licensing relief is to first lawfully apply for and get FCC approval of the real party or parties in control, and related approvals in this case regarding DE bidding and licensing qualifications or disqualifications, annual DE reports, etc. The extensive FCC FOIA withholding, much now admitted to as unlawful (shown by FOIA 2014-664 proceeding) was designed and manipulated by MCLM to support these defects.

As the Petition and Reply showed, MCLM has never accurately disclosed its real parties in interest and its actual ownership and control. It is incomprehensible that the Bureau argues that Havens and Polaris does not have standing while at the same time, it has not for almost 12 years ever required MCLM to accurately report its ownership and control, its affiliates and their gross revenues. See e.g. the Commission's own HDO FCC 11-64, that contained numerous facts showing this, but that the FCC has decided to completely ignore by granting MCLM, an unknown entity (real parties in interest never disclosed), so-called "Second Thursday" relief and now the relief in the Order.

2. MCLM does not have *qualifying standing*, and each of the 3 Orders, including the Order, are void because MCLM is a DIP in bankruptcy with sole legal authority to act under the bankruptcy court's chapter 11 plan Order, and it lacks and has not shown authority under the Order to seek and proceed under the 3 Orders including the Order.

This is shown in the description above and the challenge pleadings to the 3 Orders.

C. <u>FCC</u>

1. FCC cannot now switch off the public interest. The public-interest ruling requirement in this Case-- already found by (i) the FCC in creation of docket 13-85 calling public participation, and (ii) in the full Commission handling the MCLM "Second Thursday" requests and (iii) issuing the OSC HDO FCC 11-64, and (iv) otherwise clear in full-Commission case precedent and the Communications Act-- is violated by the Order's

rejection of Havens's substantive showings and is not saved by cherry-picked decisions regarding section 1.41.

See Appendix 5 hereto that shows the FCC considers matters under §1.41 that are in the public interest, and it has done so for other parties (e.g. MRA and others), but for some reason refuses to do so here, where the matters involved are of significant public interest, arguably much greater than those other proceedings noted in Appendix 5 in which the Bureau has addressed challenges under §1.41. The FCC has a policy to rule in the public interest, even if a party lacks procedural rights to submit a challenge whether on timeliness or standing basis. And the FCC cannot avoid that in this Order on the basis presented that it sometimes does not rule under 1.41. This matter sets a dramatic and incorrect new precedent, and should have been placed on Public Notice for public comments by anyone, as part of Docket 13-85 for the same public interest reasons that was open to any party to comment and where the FCC would consider all comments regardless of Article III standing due to the public interest and precedential issues involved. This is also Congressional policy underlying Section 208 of the Communications Act in which there is no Article III standing requirement

2. The FCC's 3 Orders protect and reward obstruction of justice and are thus void. This "case" began by the same obstruction decades ago, and Havens timely raised and never waived his objections.

This is shown in the challenge pleadings to the 3 Orders.

3. Recusal needed. FCC staff acquiesced and facilitated MCLM (and predecessor and successor) obstruction and have disqualifying interests leading to the Order and the 3 Orders. The Order must be rejected for this reason also. These FCC parts have indeed acted contrary to Fifth Amendment requirements of due process and equal due process under law.

This is shown by other sections herein.

F. See Part III for other procedural matters

III. SUBSTANTIVE ERRORS AND DEFECTS

Substantive errors require reconsideration, reversal, and processing (however, the above procedural defects make the 3 Orders including the Order defective and void)

This Recon's threshold component and argument given above is that the 3 Orders, including the Order, are *ultra vires* and void for numerous reasons. In this Recon, Petitioners may challenge any aspect the Order on *de novo* basis because that is the legal standard for review of a governmental action complained of as *ultra vires* and void.

A. Bureau's Order, and actions that are the foundation of this Order, violate FCC rules, are ultra vires and void, contrary to §1.946 and well-established precedent, and the public interest, not merely arbitrary and capricious.

Havens shows the Order made several defective and erroneous decisions and fails to apply applicable FCC rules and precedents and is *ultra vires* rulemaking, and therefore, it should be overturned on reconsideration, or considered in the public interest under Section 1.41 (see e.g. Appendix 5) or §1.106(c)(2), because consideration of the facts and arguments is in the public interest.

On the matter captioned above, the Order is clearly defective in that it deliberately avoids the criteria for an extension of time to construct in Section 1.946(e), by purporting that it is sufficient to grant a waiver (under the waiver rule Section 1.925) of the AMTS specific rule regarding the construction/buildout deadline in Section 80.49(a)(3). The fact that an extension of time to construct is in fact a waiver (and requires upon submitting the Form 601 the extension, designation that a waiver is requested and the waiver fee is paid) does not mean that the standard for the extension/waiver in Section 1.946(e) can be avoided. That standard prohibits grant of an extension/waiver for purposes of assignment to another party (Section 1.946(e)(3)). Section 1.946(e)(3) reads:

> Extension requests will not be granted for failure to meet a construction or coverage deadline because the licensee undergoes a transfer of control or because the licensee intends to assign the authorization. The Commission will not grant extension requests solely to allow a transferee or assignee to complete facilities that the transferor or assignor failed to construct.

The Order states at its footnote 50 (emphasis added):

> See 47 CFR § 80.49(a). Having determined that MCLM has satisfied the criteria for a waiver of Section 80.49(a), we do not reach MCLM's request for an extension under Section 1.946 of the rules, 47 CFR § 1.946.

And at its ¶23 it states (emphasis added):

> 23. IT IS FURTHER ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.925(b) of the Commission's Rules, 47 CFR § 1.925(b), that the Request for Extension and/or Waiver of AMTS Geographic License Performance Deadline, filed by Maritime Communications/Land Mobile, LLC, on December 28, 2016, IS GRANTED to the extent that the substantial service deadline is waived until two years after the date of release of this Order.

The Bureau must grant an extension of time to meet the construction-substantial service deadline pursuant to Section 1.946, which is the FCC's Part 1 rule on extensions of time to construct or meet any substantial service deadline. Thus, the Order's grant of MCLM's extension request to meet its substantial service deadline is outside of the FCC's rules. The Order grants an extension of time of two years. The Order's ¶¶ 20 and 21 show that the extension grant is only for purposes of giving Choctaw, not MCLM, time to meet construction-substantial service. The Order at ¶20 states:

> For the reasons described above, we conclude that the public interest will be served by providing MCLM and any assignee of its spectrum (including but not limited to Choctaw) additional time in which to demonstrate substantial service…. Providing MCLM and any assignee two years from the release of today's order to demonstrate substantial service will support the Commission's stated goal of fostering near-term, intensive use of the MCLM spectrum…

And the Order at ¶21 states:

> We conclude that it will serve the public interest, convenience, and necessity to grant the Renewal Applications, and WTB's licensing staff will process the Renewal Applications subject to the condition that MCLM or any future licensee of the spectrum demonstrate substantial service within two years of this Order's release date. Renewal of MCLM's geographic licenses pursuant to this Order will remove the final procedural impediment to processing the Choctaw Application….

However, Section 1.946(e)(3) expressly prohibits the Bureau from granting MCLM an extension of time of its Licenses' substantial service deadline, so that it can assign its Licenses to Choctaw. In addition, MCLM fails to meet the requisites under Section 1.946(e) for grant of its extensions otherwise. The Bureau suggests that it has done similar in the *M-LMS Waiver Order*, 29 FCC Rcd at 10368, para. 18, but in that Order the licensees were requesting extensions of time, but not so that they could assign the licenses to third parties, but instead to meet the buildout deadline for reasons permitted by Section 1.946(e).

The Bureau cannot use §1.925 to bypass §1.946 when granting an extension of time. An request for an extension of time is a waiver under §1.946(e) of the service-specific construction-substantial service rule under §80.49(a)(3).

Thus, the Bureau is not processing MCLM's assignment to Choctaw, or MCLM's extensions and renewals for the Licenses, in accord with the "Commission's regulations and policies" as it was directed to do in the Second Thursday Order, FCC 16-172, because if it was doing that, then it would have had to deny the extensions, then dismiss the renewals, and then recognize the automatic termination of the Licenses, which would moot the assignment to Choctaw.

Section 1.946 applies to public coast stations, including AMTS licenses. Section 1.946(e) reads:

> (e) Requests for extension of time. Licensees may request to extend a construction period or coverage period by filing FCC Form 601. The request must be filed before the expiration of the construction or coverage period.

Section 80.49 is entitled "Construction and regional service requirements" for public coast stations, which includes AMTS (Section 80.49(a)(3)). There is nothing in Section 80.49 that mentions an "extension" to meet a substantial service deadline that is set at 10 years for geographic licenses. Thus, AMTS licensees must refer to Part 1 rules, and in particular

§1.946(e), when applying for an extension of time to meet construction-substantial service requirements under Section 80.49(a)(3).

The Bureau itself has made clear that Section 1.946(e) applies to AMTS for purposes of construction, in its past decisions granting or denying extension relief to AMTS licensees. For example, see *Order on Reconsideration*, DA 12-244, released on February 17, 2012, *27 FCC Rcd 1702* (Appendix 6), which denied a petition for reconsideration filed by Havens regarding certain extension requests for AMTS licenses under Section 1.946. That DA 12-244 stated at its ¶6 (footnotes omitted):

> ….The Bureau's Mobility Division denied the fourth extension request, stating Section 1.946(e) expressly states that "[a]n extension request may be granted if a licensee shows that failure to meet a construction or coverage deadline is due to involuntary loss of site or other causes beyond its control." Havens' Extension Request does not meet this standard. We find that the failure to construct was the result of the licensee's business decision, and therefore was not due to circumstances beyond the licensee's control.

Further, the FCC's own "Construction/Coverage Deadline Reminder Notice" to MCLM for the subject Licenses, dated 9/27/16, stated at its ¶2 (Exhibit 3):

> You may request an extension of time to extend the construction/coverage period by filing FCC Form 601 Main Form & Schedule L, with the Commission before the construction/coverage deadline. See 47 C.F.R. § 1.946(e). The filing of such an extension request, however, does not automatically extend the construction/coverage period unless the request is based on an involuntary loss of site or other circumstance beyond the licensee's control, in which case the period is automatically extended pending disposition of the request. See 47 C.F.R. § 1.946(e)(4).

In addition, the FCC's own website shows that grant of an extension request requires a waiver of Section 1.946 requirements. See the FCC's website at http://wireless.fcc.gov/licensing/index.htm?job=const_req_home#d36e82). (Exhibit 1 hereto).

In addition, see the Bureau's numerous decisions over the years on licensee extension requests in FCC records that show that the Bureau grants FCC licensee requests for extensions of the construction/substantial service deadline pursuant to Section 1.946, as well as along with any

other relevant rule sections for a radio service. For example, see e.g. *Memorandum Opinion and Order*, DA 11-532, released March 22, 2011, *26 FCC Rcd 4021*, ¶7, and at ¶¶14 and 15.

In addition, MCLM understood that any extension of time to meet substantial service required grant of a request for extension of time under Section 1.946, and for that reason MCLM's request for an extension of time (filed 8/24/16 as a "pleading" under its Licenses and as part of its renewal applications captioned above), specifically refers to Section 1.946(e) and requests an extension thereunder.

See also Appendix 4 regarding the 220 MHz Termination Order, DA 12-848, that shows extensions of time to meet construct-substantial service deadlines must be considered "in conjunction with Section 309(j)" that deals with performance requirements, which is Section 80.49(a)(3) for AMTS. Thus, the Order is entirely defective for intentionally not doing what the Bureau knows it must do.

Apparently, since the Mobility Division could not grant MCLM's request for an extension of the construction-substantial service deadline under Section 1.946(e), and applying §1.946(e) would moot the Commission's Second Thursday Order, FCC 16-172, the Bureau avoided applying Section 1.946(e) in the Order. That is *ultra vires* rulemaking and is outside of the Bureau's authority. That makes the Division's grant of MCLM's extensions requests void, because the grant was not pursuant to the applicable rule on extensions of time of construction/substantial service deadlines, Section 1.946(e).

The Order is clearly defective and must be reversed on reconsideration because the Bureau is granting an extension of time without doing it under any rule. The Bureau does not have authority to do that. Nothing in Commission's Second Thursday Order, FCC 16-172, talks about the Bureau granting MCLM an extension of time waiver outside of FCC rules.

In the *Finderbond* case, Fiberbond filed bankruptcy and sought that the Bureau find that it met substantial service by constructing some of its links in some of its licensed areas, but if the

Bureau did not agree with that, then to grant an extension because it was in bankruptcy. The Commission said no. The bankruptcy court ordered the FCC to not resell the licenses if it takes them back for lack of construction until the end of the bankruptcy or until it had all opportunities for administrative appeals within the FCC, and to DC Circuit Court. The FCC appealed that decision to the US District Court in Texas and lost. The point there was that there is no policy in bankruptcy of an FCC licensee whereby they can argue special relief to keep licenses for which they have not met substantial service and have not met criteria for an extension of time. There is nothing on Second Thursday stating that. If there were, then MCLM would have argued that to get an extension as part of its Second Thursday request, and if the Commission thought MCLM should get relief from Sections 80.49 and 1.946, then it could have said that in FCC 16-172. The Bureau has no authority to modify the Commission's Second Thursday Order, FCC 16-172. That is what this Order impermissibly stands for.

The Bureau is right to essentially state that the Second Thursday Order, FCC 16-172, has no effect if MCLM's extensions and renewals are not granted. In fact, the Order at its footnote 21 admits to this fact, where it states:

> 21 Id . at 13738, para. 18. The Commission did not, however, grant the Choctaw Application or any other application in the Choctaw Reconsideration Order ; it instead directed the Wireless Telecommunications Bureau (WTB) to process the subject applications in accordance with the Commission's regulations and policies, noting that WTB has "discretion to address … timing and logistical issues under its existing delegated authority." Id . at 13737, note 59.

MCLM could have amended its Second Thursday request or sought reconsideration of the Second Thursday Order, but it did not. This Order by the Bureau is the real Second Thursday decision, because without this decision there are no licenses. This shows that Second Thursday makes utterly no sense unless the rule Section 1.946(e)(3) is waived, and no one made an argument for waiver of this rule, because it is not allowed. This is the essence of Second Thursday. As such, this Petition is also a proper petition against the Second Thursday decision,

and therefore, a copy will be placed in dockets 13-85 and 11-71, which are relevant to this proceeding. Certainly, MCLM, Choctaw and FCC knew the importance of MCLM's extensions and renewals to Second Thursday relief.

This means that the Commission's Second Thursday Order was not final and decided, because the purpose of that Second Thursday Order, FCC 16-172, could not be fulfilled until MCLM's Licenses were extended, renewed, and assigned to Choctaw, which means that this Petition is also an effective challenge to the Second Thursday Order, FCC 16-172, because if successful, then the Second Thursday Order is moot.

In effect, the Order allows a bad actor (in this case MCLM—see e.g. FCC 1-64) to use its bad actions that resulted in delays, as basis for extension relief, which provides a unique benefit to wrongdoers versus licensees who have not done nothing wrong. That is, it provides specific, unique extension relief to wrongdoers versus licensees who have conducted no wrongdoing, and therefore, encourages wrongdoing to get that special unique extension relief not available to parties who have committed no wrongdoing. That is a very bad precedent and should be overturned upon reconsideration, either under Section 1.106 (including Section 1.106(c)(2)) or Section 1.41.

In addition, §1.925 cannot be read to replace or be in conflict with Section 1.946(e), but can be read in harmony with it. Thus, the Order's analysis of MCLM's extension request meeting the requirements under Section 1.925 is incomplete, because the Bureau also had to apply the requirements of §1.946(e) to determine whether or not to grant an extension of time. Section 1.946(e)(1), which states:

> (1) An extension request may be granted if the licensee shows that failure to meet the construction or coverage deadline is due to involuntary loss of site or other causes beyond its control.

Furthermore, the Order erroneously finds that MCLM should be granted an extension because it was delayed in undertaking efforts to meet substantial service due to circumstances beyond its control, but that is entirely incorrect and specious. MCLM was in control of and the cause of all the proceedings and matters that it argues led to its delays. It was MCLM that decided to cheat at FCC Auction No. 61 by not accurately disclosing its ownership, control, affiliates, and gross revenues of its affiliates, and it was MCLM that lacked candor regarding those matters, all of which eventually led to FCC 11-64 and then 11-71. It was MCLM that took no action to construct the licenses between their grant in December 2006 to the release of FCC 11-64 in 2011. It was MCLM that decided to challenge FCC 11-64 and pursue a hearing under 11-71. It was MCLM that said it did not want and allowed to be destroyed the records of construction and operation of its site-based AMTS licenses, which delayed the first part of the hearing under 11-71. It was MCLM that decided to keep site-based licenses that even it decided were terminated up to 2.5 years prior to admitting that to the FCC. It was MCLM that chose to continue to lack candor and misrepresent to the FCC over the years regarding its actions (see FCC 11-64). It was MCLM that decided to pursue Chapter 11 bankruptcy in order to seek Second Thursday relief. It was MCLM that decided to file for Second Thursday relief and pursue that relief in Docket 13-85. All of these were not "causes beyond its control", but were a direct result of MCLM's control and decisions. MCLM, and the wrongdoers in its (Donald DePriest, Sandra DePriest, John Reardon, etc.) are the cause of all the delays it asserted and that the Bureau has accepted for purposes of granting extension relief. For example, MCLM has still not ever accurately disclosed to the FCC its ownership and control, affiliates and their gross revenues to this date!

The Order erred in its analysis. Clearly, MCLM failed to meet the requirements under Section 1.946(e)(1) for grant of any extension. For the Order to effectively find that MCLM's

own bad actions and decisions, fully within its control, that resulted in delays, justify an extension is wrong and should be overturned.

In addition, Section 1.946(e)(3) expressly prohibits the type of relief the Order granted, which is an extension of time to allow MCLM to assign the Licenses to Choctaw. The extension grant is not for MCLM to build the Licenses, but to allow it time to assign them to Choctaw. As such, the Order's grant of an extension of time, and in turn to then grant the renewals, are both defective and void under §1.946(e)(3).

There is no waiver justification based upon a party's own bad actions. That is rewarding wrongdoers who violate the Commission's rules. If a bad acting licensee gets relief for unexplained reasons for its licenses, then how can the FCC deny any extensions to other licensees who are not bad actors? This entire Order promotes cheating and rule violations as a basis to get extension relief, that lawful, rule-abiding licensees cannot get. Notably, the Bureau cites to no prior precedents where the FCC has granted an extension of time to a licensee based on a licensee's bad actions and rule violations be the cause of delay.

In effect, the Order's decision amounts to an *ultra vires* rulemaking, because it eviscerates the meaning of Section 1.946(e) for all FCC licensees. This is the second *ultra vires* rulemaking that the Bureau has done for MCLM (in Auction No. 61, the Bureau did an *ultra vires* rule change of Section 1.2105). If the Order is not reversed upon appeal, then it establishes a precedent that affects all FCC licensing in all radio services, as well as all past and future license extension requests (parties who have had past extension requests denied because they asked for extensions to assign licenses to another party or that did not meet requirements for grant under 1.946(e) as MCLM did not). This Order is appropriate for reconsideration under Section 1.106 (including Section 1.106(c)) or Section 1.41, and should be put out on Public Notice for comments by the public, because its decision will have far reaching consequences. When the Bureau makes an *ultra vires* rulemaking, as it is doing by this Order, then that affects

and harms all FCC licensees and their owners. This alone gives standing to challenge the Order, because it is unlawful rulemaking outside of the Administrative Procedures Act.

B MCLM licenses have automatically terminated without specific Commission action under § 1.955. And the Order contradicts prior ALJ-WB MCLM termination Orders.

Per Section III.A. above, the Order did not grant a lawful extension under 1.946(e) and thus, the Licenses have automatically terminated without specific Commission action under §1.955(a)(2) and §1.946(c).

In addition, the Order contradicts the prior termination Orders of ALJ Sippel and the Wireless Bureau as follows. MCLM admitted in proceeding 11-71 that the majority of its site-based licenses automatically terminated due to permanent discontinuance, and thus, ALJ Sippel issued his order accepting the MCLM stipulation to that termination (ALJ *Order*, FCC 14M-31, released October 9, 2014, EB Docket No. 11-71), and the Bureau implemented that Sippel termination Order in the Bureau's subsequent Order granting Havens' Section 1.41 request to delete the terminated stations (*Order,* DA 15-551, released May 7, 2015, *30 FCC Rcd 4642*). The Order, DA 17-450, subject of this Recon contradicts those prior MCLM termination Orders in that it *sua sponte* grants a waiver of automatic termination under §1.955, as described above. Rather than granting *sua sponte* such extraordinary relief, the Bureau should have looked especially hard at granting any extension relief to MCLM after it admitted to keeping bogus, dead AMTS stations nationwide throughout the 4-year course of the 11-71 proceeding and for years prior to that. The Bureau also discussed in the Declaratory Ruling Order discussed in Section IV.B herein, the Havens-MCLM Third Circuit case in which the Third Circuit commented upon the undisputed fact shown in the District Court evidentiary case that MCLM lied to the trial court judge on the essence of that trial, which is that it held valid site-based licenses nationwide, when it knew that was fraudulent. It in fact was obstruction of justice under 18 USC, including §1519.

Since MCLM's requests for extension cannot be granted pursuant to Section 1.946(e), and since the Bureau already concluded that MCLM's renewal showing did not meet the substantial service requirements under Section 80.49(a)(3), then, upon reconsideration, MCLM's requests for extension of time must be denied by the Bureau and its Applications dismissed and the Licenses recognized as automatically terminated as of their expiration date, without specific Commission action pursuant to Sections 1.946 and 1.955. Thus, this entire proceeding, and the proceedings dependent related to it (Dockets 13-85 and second part of 11-71) are entirely moot and the FCC can move onto better uses of its resources.

Petitioners further assert that merely pointing out to the FCC facts that show automatic termination of the Licenses does not require standing.

C. MCLM under its ownership and control in the bankruptcy is void *ab initio* due to violation of required transfer of control under 47 USC §310. The extension applications were not filed and certified on required form 601 with a current form 602.

See Petition at its sections 5, pages 28-36 and the Reply at pages 3-6 (discussing MCLM failure to ever apply for transfer of control and accurate disclosure of ownership and control, including real parties in interest), which show that MCLM never filed the required transfer of control application on Form 601, and has never accurately disclosed its ownership and control on Form 602, all of which were pre-license grant requirements, and cannot be waived after license grant, because the FCC must know the real parties in interest and control and ownership of FCC licenses before granting licenses (and in this case MCLM still has not met those requirements).

FCC has Form 601 with specific purpose of "extension" (EX), and it is also a waiver request and you must pay a fee. Petitioners are not aware of MCLM paying required extension fees since the ULS system generates fees when the Form 601 with an "EX" purpose is generated. MCLM also failed to show why it could not file on Form 601 and to request a waiver of §1.946(e) to file in another method. MCLM could have filed in paper with a waiver request to accept, or have gotten the FCC to correct its ULS system prior to the license expiration date in

order to file an extension request on Form 601 or to allow it to file "with errors," but it did not, and that was its choice.

In this case, all MCLM rights to proceed with any of its licenses was subject to the public-comment docket 13-85, because the Bureau had properly found the extensive MCLM licensing holdings and extraordinary circumstances (including those in the Commission's OSC-HDO, FCC 11-64, and the MCLM bankruptcy filed for the admitted purpose of seeking "Second Thursday" relief) required a public proceeding, under the Public Notice and procedures under Docket 13-85. MCLM's renewals and extensions are part and parcel of that public proceeding, and thus the MCLM failure to file its extension request under extraordinary rationale should not be waived. Therefore, the requirement to file extension requests on Form 601, that creates new applications on ULS, and can be noticed by existing or new parties in Docket 13-85, should not be waived and instead enforced against MCLM.

The Commission and Bureau have not shut down Docket 13-85. Thus, MCLM's extension requests should have been placed in that docket on Public Notice for comment. The Bureau has done that to extension requests for other radio services, such as LMS, Part 22 Paging, etc. Thus, the Bureau erred in its Order by deciding on the renewals and extensions before doing that.

Section 1.925(b) states that requests for waivers must be filed on Form 601, 603, or 605. Section 1.946(e) states that requests for extension of time may be made by filing Form 601. However, MCLM did not file its requests for extension of time on the required Form 601 for requests for extension of time (the FCC has a specific option for filing a Form 601 to request an extension). The Order recognizes these facts at its footnote 26. Filing a request for extension as a pleading, or as an attachment to a renewal application, is not the same as filing the request for extension on the Form 601 (see Exhibit 1), as required by Section 1.946(e). Exhibit 2 contains a copy of the FCC's ULS online "Applications" section of the "Admin" tab for Call Sign

WQG315, that shows MCLM did not file any Form 601 request for extension of time under that license. The Bureau did not grant MCLM a waiver of that filing requirement and MCLM did not request one. As such, the Order's grant of the requests for extension is defective for that reason alone. All other licensees must meet those filing requirements, so the Bureau should not exempt MCLM absent a waiver request and grant thereof. However, it is now too late for MCLM to file timely any requests for extension of time on the required FCC form, and MCLM did not ask for a waiver to do so. Thus, its geographic licenses have expired and terminated without specific Commission action under Sections 1.946(c) and 1.955(a)(1) and (2). The Bureau cannot just waive FCC rules without the licensee requesting a waiver and getting that waiver granted. MCLM had more than ample time to work with the Bureau and ULS staff prior to the license expiration date to get any technical issues fixed in order to allow it to file its requests for extension of time on Form 601. MCLM simply failed to do so.

IV. OTHER MATTERS

A. FOIA 2014-664: New Hearing Needed.

The matters of this section will be submitted as a supplement to this filing, next week, after the Office of General Counsel responds to the last exchange and thus makes this ripe: the same applies to section IV.C below.

B. FCC Declaratory Ruling in 3rd Cir MCLM Case: New Hearing and Other Ramifications

This will be in a supplement.

C. Proposed Settlement Conference and Arbitration, and Structure USDC Action in Alternative or in Parallel

The matters of this section will be submitted as a supplement to this filing, next week, after the Office of General Counsel responds to the last exchange and thus makes this ripe.

IV. CONCLUSION

Petitioners request grant, and under law the Bureau or the Commission should grant, Petitioners' requested relief in the subject Petition to Deny and this "Recon" filing.

Respectfully submitted,

June 12, 2017,

/s/
Warren Havens
Warren Havens, an Individual
And for Polaris PNT PBC, as President

Contact information is on the Caption page.

Declaration

I, Warren Havens, declare under penalty of perjury that the foregoing filing, including any attachments and exhibits, was prepared pursuant to my direction and control and that the factual statements and representations contained herein known to me are true and correct.

/s/

_____

Warren Havens

June 12, 2017

Certificate of Filing and Service

I, Warren C. Havens, certify that I have, on June 12, 2017:[*]

(1) Caused to be served, by placing into the USPS mail system with first-class postage affixed unless otherwise noted below, a copy of the foregoing filing, including any exhibits or attachments, to the following:

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(2) Caused to be filed the foregoing filing as stated on the caption page, and thus, as I have been instructed, [**]provide notice and service to any party that has or may seek to participate in dockets 13-85 and 11-71 that extend to this filing, and the defined "Order" and "3 Orders."

/s/

Warren Havens

[*] The mailed service copies being placed into a USPS drop-box today may be after business hours and thus may not be processed and postmarked by the USPS until the next business day.
[**] The FCC Office of General Counsel informed me regarding others' filings concerning MCLM relief proceedings that I was served in this fashion. I assume OCC does not apply a different standard to others. If OCG has a different standard, it can make that clear and public.